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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOSE CASTELLANOS,

Plaintiff and Respondent,

v.

KIMBERLY WIESER,

Defendant and Appellant.

2d Civil No. B289618
(Super. Ct. No. 56-2016-
00484503-CU-BC-VTA)
(Ventura County)

Kimberly Wieser entered into a contract to sell a residence to Jose Castellanos. A dispute arose between the parties and Wieser refused to close escrow. Castellanos brought an action for specific performance and damages. Castellanos prevailed, and the trial court ordered the parties to close the escrow by a given date. After Wieser refused to cooperate, the court granted Castellanos's motion for an order appointing the court clerk as elisor to execute a grant deed to the property.

Wieser appeals, contending the trial court lost jurisdiction to enforce its order after the date it selected for close of escrow. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Wieser owned residential real property in Port Hueneme, California. She agreed to sell the property to Castellanos and the parties entered escrow. A dispute arose and Wieser refused to close escrow.

After Castellanos filed an action for specific performance and damages, the parties agreed to submit their dispute to binding arbitration. The arbitrator found that Castellanos was entitled to specific performance, and ruled that “[Castellanos] shall have sixty (60) days from the date of the Final Award to close escrow.” The arbitrator awarded Castellanos \$74,000 in fees and costs.

Castellanos petitioned the trial court to confirm the arbitration award. The trial court granted the petition. The trial court’s judgment states in part: “[Wieser] is to specifically perform the contract entered into by the parties . . . on the same terms and conditions, the escrow for the sale to close on or before August 7, 2017.”

The parties’ contract includes paragraph 14(G) which reads as follows: “CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller, and (ii) give the other Party at least 3 . . . Days after Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.”

The contract also requires Wieser to remove all monetary liens of record and to provide Castellanos with a policy of title insurance at Wieser’s expense. A preliminary title report

shows a trust deed in the amount of \$55,000 in favor of Wieser's attorney.

Neither party had fulfilled the conditions of escrow by August 7, 2017. Two days later, Wieser delivered a unilateral cancellation of contract to escrow. Wieser had not given Castellanos a three-day demand to close escrow as required by paragraph 14(G) prior to cancelling escrow.

On September 29, 2017, Wieser conceded her error and rescinded the cancellation of escrow. Four days later, on October 3, 2017, Wieser delivered a three-day demand to close escrow.

Castellanos was ready to close escrow on October 6, 2017, within the three-day demand. Escrow notified Castellanos, however, that it was unable to close escrow because Wieser had failed to provide title insurance, as she was obligated to do under the contract. That afternoon, Wieser's counsel sent Castellanos's counsel an e-mail stating in part: "I am not going to waste my time appearing on Tuesday. Your clients cannot get title. Period. They cannot close. Period. Make sure you tell the judge that title will not issue a policy."

Castellanos made a motion to appoint a receiver to carry out the terms of the contract. The trial court granted the motion. Wieser appealed. (*Castellanos v. Wieser*, 2d Case No. B286493.) At Castellanos's request, the trial court vacated its order appointing a receiver. We dismissed the appeal as moot.

Castellanos then filed a motion to appoint the court clerk as elisor to execute a grant deed to the property. Castellanos included the following calculations in a supporting affidavit: The net sales price of the property was \$480,000. A first trust deed encumbers the property in the amount of

\$370,000. Wieser's attorney has a junior trust deed in the amount of \$55,000. The remaining balance, or equity in the property, of \$55,000, is less than the amount Wieser owes Castellanos on the judgment. Castellanos agreed to credit Wieser the amount of her equity in the property against the amount Wieser owes Castellanos on the judgment.

Wieser did not challenge the facts stated in Castellanos's moving papers. The trial court granted the motion, and did not require payment from Castellanos to Wieser. The court clerk executed a grant deed to the property and Castellanos recorded the deed.

DISCUSSION

Wieser contends the grant deed is void because the trial court lacked jurisdiction to vacate or correct the arbitration award or judgment confirming the award after the date the court set for close of escrow had passed. We disagree.

Standard of Review

Whether a trial court acted in excess of its jurisdiction presents a legal question which we review de novo. (*Robbins v. Foothill Nissan* (1994) 22 Cal.App.4th 1769, 1774.) If jurisdiction exists, we review an order appointing the clerk of the court as elisor to execute escrow documents for abuse of discretion. (*Blueberry Properties, LLC v. Chow* (2014) 230 Cal.App.4th 1017, 1020 (*Blueberry Properties*).)

Analysis

The underlying contract for sale of the real property remained in effect after the scheduled closing date. Accordingly, the trial court retained jurisdiction to enforce its terms.

The arbitrator awarded Castellanos specific performance of the entire real estate contract, not just the

provision containing the date for performance. The trial court expressly affirmed the award “on the same terms and conditions” as provided in the contract. One of those terms is paragraph 14(G), which requires three days notice before a party can cancel the contract based on the other party’s failure to perform.

The August 7, 2017, date for performance must be read in light of paragraph 14(G). (See Civ. Code, § 1641 [“The whole of a contract is to be taken together, so as to give effect to every part, . . . each clause helping to interpret the other”].) As so read, the parties could not be compelled to perform prior to August 7, 2017, but pursuant to paragraph 14(G) the contract did not terminate on that date.

In fact, Wieser recognized the contract had not ended on August 7, 2017, when she rescinded her notice of cancellation and delivered a three-day notice to perform on October 3, 2017. Castellanos was ready to perform by October 6, but Wieser was not.

The evidence presented to the trial court demonstrated that Wieser refused to perform the contract, and even took steps to prevent performance. For example, the evidence showed that Wieser’s attorney prevented the title insurer from issuing a title policy by threatening to sue the title insurer if escrow closed. Under the circumstances, the trial court acted well within its discretion in appointing the court clerk as elisor to execute a deed to the property. (See *Blueberry Properties, supra*, 230 Cal.App.4th at p. 1020 [“A court typically appoints an elisor to sign documents on behalf of a recalcitrant party in order to effectuate its judgments or orders, where the party refuses to execute such documents”]; *ibid.* [affirming order appointing elisor to execute escrow agreement]; see also *Rayan v.*

Dykeman (1990) 224 Cal.App.3d 1629, 1635 [appointment of
elisor to execute deed].)

Wieser also contends the trial court erred in granting specific performance because Castellanos had not performed his obligations under the contract. Wieser argues Castellanos has paid nothing to her. But Castellanos demonstrated that fees and costs awarded to him exceed any net proceeds due to Wieser from the sale. The trial court found Castellanos's calculations to be correct, and Wieser does not contest them on appeal.

DISPOSITION

The judgment (order) is affirmed. Costs on appeal are awarded to Castellanos.

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TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Henry J. Walsh, Judge

Superior Court County of Ventura

Law Offices of Edward P. Kerns, Edward P. Kerns;
Schorr Law and Zachary D. Schorr, for Defendant and Appellant.

Michie Law Firm and Doug Michie, for Plaintiff and
Respondent.